IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 974 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHIMANLAL JIVRAJBHAI KAPURIYA

Versus

UMAKANT ALIAS GANDALAL KALIDASPANCHAL

Appearance:

1. Civil Revision Application No. 974 of 2001

MR MUKESH R SHAH for Petitioner

MR HS MULIA for Mr RC JANI for Respondent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/10/2002

ORAL JUDGEMENT

This Revision Application has been preferred under section 115 CPC against the Order dated 25th July,

2001 passed by the learned Assistant Judge, Sabarkantha in Civil Revision Application No. 1 of 1999.

The petitioner herein is a Landlord. The petitioner has instituted Regular Civil Suit No. 136 of 1989 in the Court of Civil Judge [JD], Modasa for recovery of possession of the suit premises and the amount of rent due. According to the petitioner, the rent has been due since 6th January, 1985. Pending the said suit, the petitioner on 12th January, 1999 made Application Exh. 137 under section 11 (4) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"]. The plaintiff prayed for a direction to the defendant-tenant to deposit a sum of Rs. 32,400/= being the amount of rent due since 6th July, 1985 till 5th January, 1999 at the rate of Rs. 200/= per month [interim standard rent fixed by the Court]. The said Application was heard and decided by the learned trial Judge. Under order dated 20th February, 1999, the learned trial Judge was pleased to direct the tenant to deposit the rent due since 6th July, 1985 at the rate of Rs. 200/= per month [interim standard rent fixed by the Court] by 20th March, 1999. The tenant was further directed to deposit the interim standard rent every month regularly. The learned trial Judge further observed that on failure of the tenant to deposit the rent, as directed, he shall not be entitled to appear and defend the suit as envisaged under section 11 (4) of the Rent Act.

Feeling aggrieved, the defendant-tenant preferred Civil Revision Application No. 1 of 1999. The said Revision Application was allowed under the impugned Order dated 25th July, 2001 by the learned Extra-Assistant Judge, Himmatnagar-Sabarkantha, Camp-Modasa. The learned Extra-Assistant Judge was pleased to modify the order of the trial Court to the effect that the tenant shall deposit the rent due from the date of the suit i.e. 6th July, 1989 at the rate of Rs. 200/= [interim standard rent fixed by the Court]. The learned Extra-Assistant Judge further observed that on defendant's failing to deposit the rent, as directed, the learned trial Judge should proceed on the footing that the defendant is not restrained from appearing in and defending the suit. Feeling aggrieved, the petitioner-plaintiff has preferred the present petition.

Mr. Shah has submitted that the Court below has committed jurisdictional error in as much as the defendant-tenant has been ordered to deposit the amount of interim rent due since 6th July, 1989. Even if the

petitioner were entitled to recover the arrears of rent for a period of three years prior to the date of the suit, the petitioner would be entitled to such rent atleast since 6th July, 1986. The Court below ought to have directed the tenant to deposit the rent due since 6th July, 1986; if not since 6th July, 1985. Besides, the latter direction is contrary to law. Section 11 (4) of the Rent Act empowers the Court to make an order directing the tenant to deposit in Court forthwith such amount of rent as the Court considers it to be reasonably due to the landlord. The court is also empowered to make an order directing the tenant to deposit in Court, monthly or periodically, such amount as it considers it proper as the interim standard rent, during the pendency of the suit. In case where the tenant fails to comply with such order, the Court is empowered to direct that the defendant shall not be entitled to appear in and defend the suit except with the leave of the Court. In the submission of Mr. Shah, the Court below could not have directed the trial Court to ignore the failure of the tenant in complying with the direction issued under section 11 (4) of the Rent Act and to allow the defendant to appear in and defend the suit.

To me, it appears that the Court below has committed an apparent error in as much as the court below having said that the plaintiff-landlord was entitled to recover the arrears of rent for a period of three years prior to the date of the suit, it has directed the defendant-tenant to deposit the amount of rent due from the date of the suit. Further, there also appears to be an error in issuing direction that the trial Court should not proceed on the footing that the defendant is restrained from appearing in and defending the suit.

In above circumstances, in my view, the petitioner-plaintiff ought to have preferred review before the Court below pointing out the errors apparent on the face of the record. The Revision Application is, therefore, disposed of. Rule is discharged. Interim relief stands vacated. The parties shall bear own costs. The petitioner-plaintiff may seek review of the impugned order dated 25th July, 2001. In case petitioner prefers such a Review, he may also pray for early hearing thereof.

[Ms. R.M Doshit, J.]

Prakash*